(31)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 407

JOE LASH, *Petitioner*,

vs.

STATE OF ALABAMA.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA AND BRIEF IN SUPPORT THEREOF.

JOSEPH A. PADWAY,
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JOE LASH, *Petitioner,*

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PETITION FOR WRIT OF CERTIORARI.

To the Honorable The Justices of The Supreme Court of the United States:

The above named petitioner respectfully petitions for a writ of certiorari to review a decision of the Court of Appeals of Alabama (*Lash* v. *State,* 14 Southern (2d) 229, rendered March 16, 1943), following an advisory opinion of the Supreme Court of Alabama, (*Lash* v. *State,* 14 Sou. (2d) 235, rendered February 24, 1943), writ of certiorari from Court of Appeals' decision denied by the Supreme Court of Alabama on June 10, 1943, and motion for rehearing denied by the Supreme Court on June 30, 1943, which decision affirmed a judgment of the Law and Equity Court of Lauderdale County (Circuit Court) finding petitioner guilty of violation of Section 3447 of the Code of 1923 of Alabama (Title 14, Section 54 of the Code of 1940).

Summary Statement of Matter Involved.

The petitioner, Joe Lash, is a member of a labor organization (presumably Hod Carriers and Common Laborers' Union, Local No. 366, A. F. L.) affiliated with the Building Trades Council located at Sheffield, Alabama, with jurisdiction over Sheffield and surrounding towns, including Florence, Alabama.

In late September of 1941 the said Building Trades Council authorized a picket line in front of certain premises located on Olive Street in Florence, Alabama, on which a contractor by the name of C. P. Hansel was engaged in erecting four houses (R. 61-62, R. 7-8). The dispute between the unions affiliated with the Building Trades Council and the building contractor, Hansel, was that Hansel refused to employ union labor in the construction of the houses which he was erecting (R. 62, 48). The petitioner, as a member of one of the unions affiliated with the Building Trades Council, was one of a number of pickets engaged in picketing such premises. On October 16, 1941, petitioner, while peacefully picketing, was arrested upon an affidavit and warrant of arrest sworn out by the said C. P. Hansel, in which it was alleged that the said petitioner did, "without just cause or legal excuse for so doing, enter into a combination, conspiracy, agreement, arrangement or understanding for the purpose of hindering, delaying, or preventing, C. P. Hansel from carrying on a lawful business, to-wit, the business of building houses, against the peace and dignity of the State of Alabama" (R. 1).

Said affidavit and warrant of arrest was predicated upon Section 3447 of the Code of 1923 of Alabama (Title 14, Section 54 of the Code of 1940), which provides as follows:

> "Two or more persons who, without a just cause or legal excuse for so doing, enter into any combination, conspiracy, agreement, arrangement or understanding

for the purpose of hindering, delaying, or preventing any other persons, firms, corporation, or association of persons from carrying on any lawful business, shall be guilty of a misdemeanor."

Petitioner demurred to the complaint on the ground, among others, that said Section 3447 was violative of the United States Constitution in that it deprived defendant of the right of peaceful assembly and freedom of speech, and that it failed to inform defendant of the nature of any crime or unlawful act he might have committed (R. 3). The trial court (Law and Equity Court of Lauderdale County) overruled the demurrer and proceeded to try the case without a jury (R. 6). At the close of the case for the state petitioner moved to exclude all of the State's testimony, on the ground that said Section 3447 and the evidence taken were in violation of the Constitution of the United States (R. 43). The court overruled this motion and found the defendant "guilty of conspiracy" in violation of said Section 3447. The court sentenced petitioner to 137 days at hard labor for failure to pay a fine of $250.00 and costs (R. 6). The finding of the court was a general one and did not specify the testimony upon which it rested.

The judgment was appealed to the Court of Appeals of Alabama, which court, after stating that said Section 3447 was, in its opinion, unconstitutional in view of the decision of the United States Supreme Court in *Thornhill* v. *Alabama*, 310 U. S. 88, but being without authority to declare the Act unconstitutional, certified to the Supreme Court of Alabama the question of whether said Section violated any of the provisions of the United States Constitution (R. 70, 71, 75). The Supreme Court of Alabama, in an opinion rendered February 24, 1943, determined that said section was not in violation of the United States Constitution (R. 76-84). Thereupon, the Court of Appeals of Alabama sustained the judgment of the trial court (R. 70-72). The peti-

tioner applied for a rehearing in the Court of Appeals (R. 72), which petition was denied (R. 74). Petitioner then petitioned the Supreme Court for writ of certiorari, alleging deprivation of constitutional rights (R. 84), which petition was denied by the Supreme Court of Alabama on June 10, 1943 (R. 87). Application was made for rehearing in the Supreme Court of Alabama (R. 88), and denied on June 30, 1943 (R. 92). In its denial of the application for rehearing, the court granted a stay of execution pending appeal to the Supreme Court of the United States (R. 93).

Section 3447 is a companion of Section 3448, considered and declared unconstitutional by this Court in *Thornhill* v. *Alabama, supra,* both sections being adopted at the same time (R. 77).

The petitioner, Joe Lash, was one of twenty-one defendants tried and convicted upon identical charges filed by the said C. P. Hansel under Section 3447. The defendants were tried separately and all were found guilty.

At the trial of the petitioner, Joe Lash, the following facts were developed: The picketing, commenced in protest of the hiring of non-union labor, began presumably on Wednesday, September 24, 1941, and lasted some three weeks, being stopped by the wholesale arrests precipitated under the warrants filed by the contractor who was being picketed (R. 1). The arrests took place on Monday, October 13th, (R. 51). Usually, there were around twenty-five pickets engaged in picketing the premises on which the four houses were being constructed (R. 9, 50). The picketing consisted of walking up and down in front of the premises and carrying signs stating the contractor was unfair to union labor. Except for several isolated instances hereinafter to be related, in which violence allegedly took place, the picketing was peaceful and the non-union employees were free to come and go as they pleased (R. 19, 50, 59, 65).

Although neither the complaint (or affidavit) nor the statute on which it was predicated contained any mention of violence or assault, testimony, disputed in part, was permitted at the trial, indicating that on two occasions persons referred to generally as "the pickets" engaged in throwing rocks at the houses which were being picketed, and on a third occasion engaged in throwing rocks at the automobiles of the non-union workers employed in constructing the houses, damaging the automobiles. It did not appear that anyone was hurt by the throwing of the rocks. It appears that on those instances when rocks were thrown large crowds of townspeople had gathered in front of the premises. It does not appear whether the stones were thrown by pickets or townspeople, no stonethrower being specifically identified (R. 11-15). Petitioner, Joe Lash, was not identified as being one of those who was engaged in throwing rocks, or was not shown to have in any way participated in any of the rock throwing, or as even being present when any alleged acts of violence took place.

The following undisputed evidence likewise appears in the record: Upon Mr. Hansel's being requested to employ union labor and sign a union contract, he replied that "he would see us dead and in Hell before he would give up and sign one of our damn contracts" (R. 48). On another occasion the said Hansel committed a deliberate assault with his automobile, running into and striking one of the pickets (R. 47, 67).

The charge against petitioner Lash was a general one, alleging solely a conspiracy to hinder, delay or prevent Hansel from carrying on a lawful business. No charge was made or evidence introduced that petitioner had used violence or had engaged in violence, or had attempted to engage in violence, or had conspired to delay or hinder Hansel

from carrying on his business by the use of violence.[1] The record and proof fails to disclose that petitioner did anything but peacefully parade up and down in front of the premises, bearing a sign stating that the contractor was unfair to union labor.

Statement as to Jurisdiction.

This case is one over which the Court has jurisdiction under the provisions of the Act of Congress of February 13, 1935, Section 237-b, 28 U. S. C. A., Section 344-b, giving jurisdiction to this Court:

> "to require that there be certified to it for review and determination with the same power and authority and with like effect as if brought up by appeal any clause wherein a final judgment or decree has been rendered and passed by the highest court of a state in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any state on the ground of being repugnant to the Constitution or laws of the United States; * * *."

This case is one in which the validity of Section 3447 of the Code of 1923 of Alabama (Title 14, Section 54 of the Code of 1940) and a conviction and sentence thereunder is drawn in question upon the ground that such statute and conviction, on their face and as construed in the opinion and judgment of the Supreme Court of Alabama and the Court of Appeals of Alabama, are repugnant to the Con-

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[1] There was no evidence, or any attempt to introduce evidence, that petitioner or any of the other pickets arrested under Section 3447 had, either in union meetings or on the picket line or anywhere else, conspired or agreed together to commit the violence which allegedly occurred or to commit any violence, or in any way to interfere with Hansel's business by the use of violence; on the contrary, the evidence showed that specific instructions were given to the pickets by those in charge of the picket line to conduct the picketing in a peaceful and orderly manner (R. 40).

stitution of the United States and, in particular, to the Fourteenth Amendment thereto, and to the First Amendment thereto, violations of which by the state are protected under the Fourteenth Amendment as denying petitioner liberty and property without due process of law, and denying to petitioner freedom of speech and assembly. The decisions of the Alabama Courts were in favor of the validity of the statutes and conviction. The case was finally disposed of by the courts of Alabama when the Supreme Court, on June 30th, 1943, entered its order denying application for rehearing. Every possible remedy within the state has been exhausted.

The federal questions—violation of the Constitution of the United States by depriving petitioner of liberty and property without due process and denying him freedom of speech and assembly—were raised at every possible stage of the proceedings below. Thus, the demurrer to the complaint raised the federal questions (R. 3); the motion to exclude testimony at the close of trial raised the federal questions (R. 43); the appeal from the trial court to the Court of Appeals raised the questions (which were by dictum decided in petitioner's favor) (R. 71); they were raised before and passed upon by the Supreme Court of Alabama in its decision upholding the said statute as not being in violation of the United States Constitution (R. 73); they were raised before and passed upon by the Court of Appeals of Alabama when the case was remanded to it following the decision of the State Supreme Court (R. 70); they were raised in the application for rehearing before the Court of Appeals (R. 72), which application was denied (R. 74); they were raised in petition for writ of certiorari to the Supreme Court of Alabama (R. 84), which petition was denied (R. 87); and it was raised in application for rehearing before the Supreme Court (R. 88), which application was denied (R. 92).

Questions Presented.

The following federal questions, raised and argued before the Alabama courts, are again brought forward here:

1. Is Section 3447 of the Code of 1923 of Alabama (Title 14, Section 54 of the Code of 1940) either on its face or as applied violative of petitioner's rights under the United States Constitution either as depriving of liberty or property without due process, or as denying or abridging petitioner freedom of speech and assembly?

2. Was petitioner denied due process of law in violation of the Fourteenth Amendment by conviction on a charge not made?

3. Was petitioner denied due process of law in violation of the Fourteenth Amendment by conviction under a statute so vague and indefinite as not sufficiently to inform him of the nature of the crime of which he was found guilty?

Reasons Relied On for Allowance of Writ.

The decisions of the Supreme Court of Alabama and the Court of Appeals of Alabama are in direct conflict with the decisions of this Honorable Court in *Thornhill* v. *Alabama, supra; Carlson* v. *California,* 310 U. S. 106; *American Federation of Labor* v. *Swing,* 312 U. S. 321; *Milk Wagon Drivers' Union* v. *Meadowmoor Dairies, Inc.,* 312 U. S. 287; and *Lanzetta* v. *New Jersey,* 306 U. S. 451.

WHEREFORE, Your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Clerk of the Supreme Court of Alabama, commanding that court to certify and send to this Court for review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered 8 Div. 240, en-

titled *Joe Lash* v. *State of Alabama,* and that the judgment of the Court of Appeals of Alabama, predicated upon a decision of the Supreme Court of Alabama, may be reviewed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem just and meet; and your petitioner will ever pray.

JOSEPH A. PADWAY,
HERBERT S. THATCHER,
MERWIN KOONCE,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No.

JOE LASH,

Petitioner,

vs.

STATE OF ALABAMA.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

The Opinion of the Court Below.

The opinion of the Court of Appeals of Alabama is reported in 14 Southern (2d) 229 (R. 70), certiorari denied by the Alabama Supreme Court, June 10, 1943, application for rehearing denied by the Alabama Supreme Court, June 30, 1943. The opinion of the Supreme Court of Alabama, on which the decision of the Court of Appeals was predicated, is reported in 14 Southern (2d) 235 (R. 76).

Jurisdiction.

The statement concerning jurisdiction is set forth in the petition and is incorporated herein by reference.

Statement of the Case.

The statement of the case appears in the petition and is incorporated herein by reference. Such statement contains all of the facts necessary for argument.

Specification of Errors.

The Court of Appeals of Alabama and the Supreme Court of the State erred in the following respects:

1. In holding that Section 3447 of the Code of 1923 of Alabama (Title 14, Section 54 of the Code of 1940) was not void on its face or as applied in the instant case as depriving petitioner of freedom of speech and assembly.

2. That petitioner was not deprived of liberty without due process because convicted on charges not made.

3. That petitioner was not deprived of liberty without due process in being convicted under a statute so vague and indefinite as not to apprize him of its meaning.

ARGUMENT.

I.

The statute on its face or as applied in the instant case deprives plaintiff of freedom of speech and assembly.

This case involves a union member who, while peacefully engaged with other union members in picketing certain premises in Florence, Alabama, where a building contractor was constructing houses with non-union labor,—a legitimate labor dispute under *American Federation of Labor* v. *Swing, supra*—was arrested under a statute making it a crime to combine or conspire, without just cause or legal excuse, for the purpose of interfering with the lawful business of another. The charges or complaint against the

picket were framed in the same general language of the statute and the picket was sentenced to imprisonment upon a general finding of guilty. Although there was some testimony of violence by the pickets, not, however, including or specifying the picket, Joe Lash, this testimony, even if true, is immaterial here for the reasons:

1. The picket, Joe Lash, was not charged with violence or with participating in violence, or combining or conspiring to commit violence or to hinder a lawful business by the use of violence.

2. The statute under which the picket was convicted did not deal with violence or specify that a combination or conspiracy to hinder a lawful business by the use of violence was a crime.

3. Such evidence as was introduced concerning violence did not show or attempt to show that the picket, Lash, had participated therein or agreed thereto, or even knew thereof.

The obvious complaint against the petitioner, and the complaint under which he was convicted, was that by the act of combining with others to picket the premises of a non-union contractor, for the purpose of thereby hindering or interfering with the business of such contractor, petitioner was guilty of a crime. If petitioner was being arrested, convicted or sentenced for participating in or conspiring to commit violence, surely the statute and the accusation thereunder would have so specified, and surely if it was participation in violence or the use of force with which the complainant Hansel or the State was concerned, Title 14, Section 54 of the Alabama Code of 1940 which makes it a crime

> "To prevent another from exercising any lawful trade or calling, or from doing any other lawful act, by force, threats or intimidation, or by interfering or threatening to interfere with any tools, implements or property

> belonging to or used by another, or with the use or employment thereof."—

would have been utilized, not to mention the various statutes dealing with assaults.

The Supreme Court of the State, in considering the statute, decided in substance as follows:

1. That the phrase "without just cause or legal excuse for so doing", as employed in the statute and affidavit, "means unlawful".

2. That as so construed, the statute constituted a proper exercise of the power of the state to protect "a person's business * * * from unlawful interference".

The opinion of the State Supreme Court made no reference to any acts of violence committed by any of the pickets or the defendants or to the character of the picketing. The State Supreme Court, however, adverted to the *Meadowmoor* case in the following language:

> "The opinion of the majority, in the *Drivers Union* case, *supra*, clearly indicates that the *Thornhill* case, *supra*, has no application to the *unlawful acts of the defendant declared and charged in the indictment under the statute* duly directed to an unlawful conspiracy, combination or agency to hinder or interfere unlawfully with the carrying on of any lawful business. (Emphasis supplied.)

Thus, it is seen that the court, in referring to "unlawful" acts of defendant, referred only to those acts set forth in the indictment, which is the affidavit in the present case, and which makes no mention of force or violence.

Accordingly, it is obvious that even under the interpretation given by the Supreme Court the statute

> "leaves room for no exceptions based upon either the number of persons engaged in the proscribed activity,

> the peaceful character of their demeanor, the nature of their dispute with an employer, or the restrained character and the accurateness of the terminology used in notifying the public of the facts of the dispute." (*Thornhill* v. *Alabama*, 310 U. S. 88.)

The *Thornhill* case is determinative of the issues in this case. The statute under which petitioner was convicted in the present case is a companion to the statute declared unconstitutional on its face in the *Thornhill* case. The statute in the *Thornhill* case forbade the doing of certain acts; the statute in the present case forbids a conspiracy to do the same acts. The acts which are forbidden are in both cases identical. A comparison of the two statutes reveals their similarity. The statute struck down in the *Thornhill* case stated as follows:

> "Any person or persons, who, without a just cause or legal excuse therefor, go near to or loiter about the premises or place of business of any other person, firm, corporation, or association of people, engaged in a lawful business, for the purpose, or with the intent of influencing, or inducing other persons not to trade with, buy from, sell to, have business dealings with, or be employed by such persons, firm, corporation, or association, or who picket the works or place of business of such other persons, firms, corporations, or associations of persons, for the purpose of hindering, delaying, or interfering with or injuring any lawful business or enterprise of another, shall be guilty of a misdemeanor; but nothing herein shall prevent any person from soliciting trade or business for a competitive business."

The statute in the present case states as follows:

> "Two or more persons who, without a just cause or legal excuse for so doing, enter into any combination, conspiracy, agreement, arrangement, or understanding for the purpose of hindering, delaying, or preventing

> any other persons, firms, corporation, or association of persons from carrying on any lawful business, shall be guilty of a misdemeanor."

Thus, the essence of both statutes is seen to be interfering, "without a just cause or legal excuse for so doing", with the carrying on of a lawful business. The gist of the crime under Section 3448 in *Thornhill's* case was the actual hindrance, and the statute was there struck down because of the "pervasive threat inherent in its very existence", the penal statute not being aimed "specifically at evils within the allowable area of State control * * * resulting in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview". The gist of the crime under Section 3447 in the present case is a conspiracy so to hinder, and the statute, being of purport and phraseology similar to Section 3448, should for like considerations be struck down.

As in the *Thornhill* case, petitioner here was charged under a complaint or affidavit which was phrased substantially in the very words of the statute, the affidavit under which he was arrested and convicted stating as follows:

> "* * * did, without just cause or legal excuse for so doing, enter into a combination conspiracy, agreement, arrangement or understanding for the purpose of hindering, delaying, or preventing, C. P. Hansel from carrying on a lawful business, to-wit, the business of building houses, * * *."

As in the *Thornhill* case, the finding against petitioner was a general one and did not specify the testimony upon which it rested. As in the *Thornhill* case, none of the courts below expressed an intention of narrowing the construction of the statute. Accordingly, as stated in the *Thornhill* case, the statute in question must be judged upon

its face. This is true because the regulation in question here infringes upon the right of employees to inform the public of the facts of a labor dispute. In such cases, where liberty to speak is involved, it is not permitted the state to establish a pervasive threat to the exercise thereof by a statute which does not aim specifically at evils with which the state is free to cope, but which, as stated in the *Thornhill* case,

> "on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of such a statute, which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview. It is not any less effective or, if the restraint is not permissible, less pernicious than the restraint on freedom of discussion imposed by the threat of censorship. An accused, after arrest and conviction under such a statute, does not have to sustain the burden of demonstrating that the State could not constitutionally have written a different and specific statute covering his activities as disclosed by the charge and the evidence introduced against him. *Schneider v. State*, 308 U. S. 147, 155, 162-163."

While the evidence in the case may have disclosed several acts of violence, we are here concerned not with that evidence, but with the statute and charge thereunder, neither of which make any reference to violence or specify any other unlawful activities which might arise in the cause of picketing and with which the state would be free to deal. As stated by the Supreme Court in the *Thornhill* case,

> "Where regulations of the liberty of free discussion are concerned, there are special reasons for observing

> the rule that it is the statute, and not the accusation or the evidence under it, which prescribes the limits of permissible conduct and warns against transgression."

Further, as stated in the *Thornhill* case,

> "We are not now concerned with picketing en masse or otherwise conducted which might occasion such imminent and aggravated danger to these interests as to justify a statute narrowly drawn to cover the precise situation giving rise to the danger. Compare *American Foundries v. Tri-City Council*, 257 U. S. 184, 205. Section 3448 in question here does not aim specifically at serious encroachments on these interests and does not evidence any such care in balancing these interests against the interest of the community and that of the individual in freedom of discussion on matters of public concern."

Petitioner does not contest the right of the state to make any and all laws restricting or forbidding the use of violence in labor disputes, whether or not such violence was committed for the purpose of interfering with the operation of a lawful business. Neither does petitioner deny the right of the State to prevent conspiracies to commit such violence. However, petitioner does contest the right of the State to restrict or prohibit the use of violence in labor disputes by statutes such as the present one not aimed specifically at the evil with which the State is free to cope, and which includes within it all incidence of picketing in a labor dispute, regardless of whether violence or conspiracy to commit violence is or is not involved. Where the exercise of civil liberties is concerned, the State is not accorded its usual freedom in dealing with unlawful conduct.

> "Mere legislative preference for one rather than another means for combatting substantive evils, therefore, may well prove an inadequate foundation on which to rest regulations, which are aimed at or in their opera-

tion diminish the effective exercise of rights so necessary to the maintenance of democratic institutions." (*Thornhill* v. *State of Alabama*, 310 U. S. 88.)

Broad, all-inclusive language, or language of no definite content or meaning, such as "without just cause or legal excuse", which does not serve to separate the lawful from the unlawful, or to point out the permissible from that which can be constitutionally proscribed, cannot be employed, for to do so would on its face invalidate the peaceful exercise of civil rights. The term "without just cause or legal excuse", as used in a companion statute, have authoritatively been stated by the United States Supreme Court to in no "effective manner restrict the breadth of the regulation; the words themselves have no ascertainable meaning either inherent or historical" (*Thornhill* case, *supra*); a substitution by the Supreme Court of Alabama of the equally indefinite and ambiguous term "unlawful" certainly in no more effective manner restricts the breadth of the regulation. Obviously, any peaceful act of picketing by two or more pickets engaged in a legitimate labor dispute which has the effect, as it very well might have, of hindering the carrying on of a lawful business would come under the terms of the statute, and persons engaging therein could be indicted thereunder as conspirators. As stated in the *Thornhill* case:

> "It is apparent that one or the other of the offenses comprehends every practicable method whereby the facts of a labor dispute may be publicized in the vicinity of the place of business of an employer. * * * The courses of action, listed under the first offense, which an accused—including an employee—may not urge others to take, comprehends those which in many instances would normally result from merely publicizing, without annoyance or threat of any kind, the facts of a labor dispute. An intention to hinder, delay or interfere with a lawful business, which is an element of

> the second offense, likewise can be proved merely by showing that others reacted in a way normally expectable of some upon learning the facts of a dispute."

Since *Thornhill's* case it cannot be argued that danger of injury to an industrial concern or a hindrance to its operation is sufficient to justify what amounts to a sweeping proscription of all means of informing the public of the existence and nature of a labor dispute:

> "The range of activities proscribed by Section 3448, whether characterized as picketing or loitering or otherwise, embraces nearly every practicable, effective means whereby those interested—including the employees directly affected—may enlighten the public on the nature and causes of a labor dispute. The safeguarding of these means is essential to the securing of an informed and educated public opinion with respect to a matter which is of public concern. It may be that effective exercise of the means of advancing public knowledge may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of the dispute. Every expression of opinion on matters that are important has the potentiality of inducing action in the interests of one rather than another group in society. But the group in power at any moment may not impose penal sanctions on peaceful and truthful discussion of matters of public interest merely on a showing that others may thereby be persuaded to take action inconsistent with its interests. Abridgment of the liberty of such discussion can be justified only where the clear danger of substantive evils arises under circumstances affording no opportunity to test the merits of ideas by competition for acceptance in the market of public opinion. We hold that the danger of injury to an industrial concern is neither so serious nor so imminent as to justify the sweeping proscription of freedom of discussion embodied in Section 3448."

* * * * * * *

> "The danger of breach of the peace or serious invasion of rights of property or privacy at the scene of a labor dispute is not sufficiently imminent in all cases to warrant the legislature in determining that such place is not appropriate for the range of activities outlawed by Section 3448." (*Thornhill* v. *Alabama*, 310 U. S. 88.)

The present prosecution involves an attempt to revive, through the means of an old and little used statute, the loose and easily misused doctrine of conspiracy that in the past has so often been utilized to suppress and stifle attempts of workers to better their conditions through combination.[2] Surely, where rights fundamental to a democracy are concerned, this Court will intervene, as it did in *Thornhill's* case, to protect combinations of working people to disseminate information concerning the facts of a labor dispute from the previous general restraint that is inherent in a statute such as Section 3447.

II.

If the element of violence be deemed material, petitioner was nevertheless denied due process of law in violation of the Fourteenth Amendment by conviction on a charge not made.

It might be argued, although assuredly as an afterthought, and although in disregard of the facts as disclosed in the record, that there was evidence introduced at the trial of violence operating to hinder Hansel's business; that pickets in general engaged in such violence; that petitioner Lash was one of such pickets; and that therefore it can be assumed or inferred that there was a combination or conspiracy to commit violence or to hinder Hansel's business

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[2] See Frankfurter and Green, "The Labor Injunction", pp. 2-5, and Witte, "The Government in Labor Disputes", pp. 46, 55.

by the use of violence, to which Lash, as a picket, was a party. A short answer to such an argument is that petitioner Lash was not charged with engaging in violence, or with conspiracy to commit violence, or with conspiracy to interfere with Hansel's business by the use of violence. The charge under which (although objected to as being insufficient) he was prosecuted and convicted alleged merely that he, without just cause or legal excuse, entered into a combination or conspiracy for the purpose of hindering C. P. Hansel from carrying on a lawful business. Further, the finding against petitioner was a general one and did not specify the testimony upon which it was predicated. Accordingly, if petitioner is to be convicted upon the theory that he had engaged in a conspiracy to commit violence, or to hinder Hansel's business by the use of violence, of which charge he was not apprized or given an opportunity to defend, he would have been deprived of due process of law in violation of the Fourteenth Amendment. The following statement from *Thornhill's* case, *supra*, is conclusive on this question:

> "The finding against petitioner was a geenral one. It did not specify the testimony upon which it rested. The charges were framed in the words of the statute and so must be given a like construction. The courts below expressed no intention of narrowing the construction put upon the statute by prior State decisions. In these circumstances, there is no occasion to go behind the face of the statute or of the complaint for the purpose of determining whether the evidence, together with the permissible inferences to be drawn from it, could ever support a conviction founded upon different and more precise charges. '*Conviction upon a charge not made would be a sheer denial of due process.*' *De Jonge v. Oregon*, 299 U. S. 353, 362; *Stromberg v. California*, 283 U. S. 359, 367-368." (Emphasis supplied.)

III.

Petitioner was denied due process of law in being convicted under a statute so vague and indefinite as not sufficiently to inform him of any crime.

The statute under which petitioner Lash was charged, tried and convicted simply as follows:

> "Two or more persons who, without a just cause or legal excuse for so doing, enter into any combination, conspiracy, agreement, arrangement or understanding for the purpose of hindering, delaying, or preventing any other persons, firms, corporation, or association of persons from carrying on any lawful business, shall be guilty of a misdemeanor."

Before, during, after the trial, and upon appeal petitioner objected to the charges against him and prosecution thereunder as being predicated upon a statute which was not sufficiently explicit as to inform him of any conduct on his part which might be unlawful. All objections to the sufficiency of the statute were overruled at all stages of the proceedings below. To this day petitioner has not been informed and does not know what conduct that he may have engaged in in connection with the labor dispute with the building contractor might be considered unlawful under the statute. Apparently, for the act of engaging in peaceful picketing in a legitimate labor controversy he was convicted and sentenced to 137 days in prison.

It is elemental that no one may be required, at the peril of life, liberty or property, to speculate as to the meaning of a penal statute. *Thornhill* v. *Alabama, supra; Lanzetta* v. *New Jersey, supra; United States* v. *Cohen Grocery Co.*, 255 U. S. 81, 65 Law Ed. 516.

As stated in the *Lanzetta* case, *supra,*

> "The terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are

subject to it what conduct on their part will render them liable to its penalties."

It is obvious that a statute that makes it a crime to combine for the purpose of hindering the carrying on of a lawful business embraces within it countless activities which not only are lawful but which may constitute the exercise of civil rights. See *Thornhill* v. *Alabama, supra.* A statute of greater generality than the present one would be difficult to imagine. The qualification, "without a just cause or legal excuse for so doing", has been authoritatively stated by this Court to in no "effective manner restrict the breadth of the regulation; the words themselves have ~~an~~ no ascertainable meaning either inherent or historical". *Thornhill* v. *Alabama, supra.* The construction of the clause by the Alabama Supreme Court as constituting an equivalent of "unlawful" in no greater measure serves to delimit or specify the acts which persons are forbidden to engage in. The scope of the statute is completely unforseeable, and application thereof is left entirely with the court and the jury. Where, as here, the exercise of civil rights are concerned, the doctrine that a statute "in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law," (*Lanzetta* v. *New Jersey, supra*) must be strictly applied. It is, of course, the statute and not the accusation or evidence under it that "prescribes the rule to govern conduct and warns against transgression." *Lanzetta* v. *New Jersey, supra; Thornhill* v. *Alabama, supra.*

It is respectfully submitted that petitioner's conviction and sentence under Section 3447 deprives petitioner of due process of law in that such conviction was obtained under a statute so vague and indefinite and of such a general application as not sufficiently to inform him of the nature of the crime of which he was found guilty.

Conclusion.

It is respectfully submitted that, under the decisions cited and discussed in the foregoing arguments, it is clear that petitioner has been denied and deprived of rights granted and secured under the Constitution of the United States, and that the decision of the lower court should be reversed.

Respectfully submitted,

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(8205)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 407

JOE LASH, Petitioner,

vs.

STATE OF ALABAMA

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

BRIEF FOR RESPONDENT

WILLIAM N. McQUEEN
Acting Attorney General

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ON THE BRIEF

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 407

JOE LASH, Petitioner,

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I

THE OPINION OF THE COURT BELOW.

The opinion of the Court of Appeals of Alabama is reported in 14 Southern (2d) 229 (R. 70), certiorari denied by the Alabama Supreme Court, June 10, 1943, application for rehearing denied by the Alabama Supreme Court, June 30, 1943. The opinion of the Supreme Court of Alabama, on which the decision of the Court of Appeals was predicated, is reported in 14 Southern (2d) 235 (R. 76).

II

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court to review the judgment of the Court of Appeals of Alabama predicated upon an opinion of the Supreme Court of Alabama, certiorari denied by the Alabama Supreme Court June 10, 1943, application for rehearing overruled by Alabama Supreme Court June 30, 1943. Petitioner relies upon Section 237, subsection (b) of the United States Judicial Code, as amended on February 13, 1935, (U.S.C.A. Title 28, Section 344), as giving this Court jurisdiction.

III

POINTS RELIED UPON BY PETITIONER

The points relied upon by petitioner as grounds for relief are as follows:

That the Court of Appeals of Alabama and the Supreme Court of Alabama erred in holding that Section 3447 of the Code of 1923 of Alabama (Title 14, Section 54, Code 1940) was not void on its face or as applied in the instant case as depriving petitioner of freedom of speech and assembly.

That the Court of Appeals of Alabama and the

Supreme Court of Alabama erred in holding that petitioner was not deprived of liberty without due process because convicted on charges not made.

That the Court of Appeals of Alabama and the Supreme Court of Alabama erred in holding that petitioner was not deprived of liberty without due process in being convicted under a statute so vague and indefinite as not to apprise him of its meaning.

IV

STATEMENT OF THE CASE

The petitioner, Joe Lash, together with several others, was arrested on October 16, 1941, pursuant to an affidavit and a warrant of arrest sworn to by one C. P. Hansel, in which it was alleged that they did "without just cause or legal excuse for so doing enter into a combination, conspiracy, agreement, arrangement or understanding for the purpose of hindering, delaying, or preventing C. P. Hansel from carrying on a lawful businss, to-wit, the business of building houses * * *, against the peace and dignity of the State of Alabama."

The said affidavit and warrant of arrest was predicated upon, and in substantially the same language as Section 3447 of the Code of 1923 of Alabama (Title 14, Section 54, Code of 1940), which statute provides as follows:

"§ 54. Conspiracy, combination or agreement to interfere with or hinder business, unlawful. —Two or more persons who, without a just cause or legal excuse for so doing, enter into any combination, conspiracy, agreement, arrangement, or understanding for the purpose of hindering, delaying, or preventing any other persons, firms, corporation, or association of persons from carrying on any lawful business, shall be guilty of a misdemeanor."

On November 18, 1941 petitioner and the other persons charged in the affidavit demanded separate trials. The demurrer and plea filed by petitioner attacking the charge against him on the constitutional grounds now relied upon by him being overruled by the trial court, testimony and evidence of the facts were taken resulting in a finding by the trial court of guilty, there being no jury demanded.

The evidence presented indicated that the petitioner, with many others, formed a picket line around the said C. P. Hansel's place of business presumably for the purpose of enforcing their demands upon him for a "closed shop." The testimony further showed, and the trial court and the Alabama Court of Appeals so found, that attendant to the said picketing were numerous acts of violence and disorder, namely: the throwing of rocks, damage to property, the making of threats, and the ill treatment of non-striking employees of the said C. P. Hansel.

Subsequent to the trial court's finding of guilty, petitioner appealed to the Alabama Court of Appeals, which court, after its perusal of the record sustained the lower court's finding of fact as to the violence, but, because of its lack of authority to pass upon the constitutionality of a statute, certified this question of law to the Alabama Supreme Court. The latter court held that the phrase "without just cause and legal excuse" contained in the statute in question, meant "unlawful" or "violent" and that when so applied, the statute was a reasonable exercise of the State's police power in protecting its citizens against violent and disorderly conduct.

Pursuant to this opinion of the Supreme Court of Alabama the Court of Appeals of Alabama sustained the conviction. On June 10, 1943 the Supreme Court of Alabama rendered an opinion denying petition for certiorari and on June 30, 1943 the same court denied petitioner's application for rehearing.

PROPOSITIONS OF LAW

PROPOSITION I

The construction of a state statute by the highest court of that state affords a federal court a binding interpretation of its scope and meaning from which the statute's validity, under the Constitution of the United States, is determinable by the federal court; and the federal court will not give a different construction to the statute which will make it repugnant to the Constitution of the United States.

Smiley v. State of Kansas, 49 L. Ed. 546, 196 U.S. 447;

W. W. Cargill Co. v. State of Minnesota ex rel Railroad & Warehouse Commission, 45 L. Ed. 619, 180 U. S. 453;

Stuart Lindsley v. Natural Carbonic Gas Company, 55 L. Ed. 369, 220 U. S. 61;

Henning Jacobson v. Massachusetts, 49 L. Ed. 643, 197 U. S. 11;

Hughes Federal Practice, Vol. 6, Section 3708, Page 235, Note 85 and cases cited.

Hosea B. Tullis v. Lake Erie & Western R.R. Co., 44 L. Ed. 192, 175 U. S. 34;

Missouri, Kansas & Texas Railway Co. v. McCann & Smizer, a Copartnership, 43 L. Ed. 1093, 174 U. S. 580;

N. Y., Lake Erie & Western R. R. Co. v. Pennsylvania, 39 L. Ed. 1043, 158 U. S. 431;

Hughes Federal Practice, Vol. 6, Section 3708, Page 235, Note 86 and cases cited.

PROPOSITION II

There is here presented no federal question on which the Supreme Court of the United States has not heretofore passed; its numerous decisions unequivocally uphold a state's right under its police power to protect its citizens against manifestations of force and violence.

Milk Wagon Drivers Union vs. Meadowmoor Dairies, Inc., 312 U. S. 287;

Thornhill vs. Alabama, 310 U. S. 88.

ARGUMENT

I

THE CONSTRUCTION OF A STATE STATUTE BY THE HIGHEST COURT OF THAT STATE AFFORDS A FEDERAL COURT A BINDING INTERPRETATION OF ITS SCOPE AND MEANING FROM WHICH THE STATUTE'S VALIDITY UNDER THE CONSTITUTION OF THE UNITED STATES IS DETERMINABLE BY THE FEDERAL COURT, AND THE FEDERAL COURT WILL NOT GIVE A DIFFERENT CONSTRUCTION TO THE STATUTE WHICH WILL MAKE IT REPUGNANT TO THE CONSTITUTION OF THE UNITED STATES.

It has been held repeatedly that the interpretation of a state statute by the highest court of the state will not be disregarded by the Supreme Court of the United States, nor will the latter court give to the statute a different construction which will make it repugnant to the Constitution of the United States. That this statement is uncontrovertible, the attention of the Court is directed to those cases cited under Proposition of Law No. I.

The able brief of Counsel for petitioner relies heavily, if not solely, upon the case of *Thornhill vs. Alabama*, 310 U. S. 88, in which Mr. Justice Murphy, speaking for the Court, struck down an Alabama

statute which not only purported on its face, but was so applied, to proscribe picketing in any form, peaceful or otherwise. However, the statute considered in the Thornhill case could not have been, by previous judicial construction, directed only to unlawful or violent picketing. An attempt had been made to apply it to all forms of picketing, hence its unconstitutionality.

But similar circumstances are not here found. The State of Alabama has indicated no intention to impair the fundamental right of an employee to picket peacefully and orderly for the enforcement of his just demands. Rather, the statute in question, as construed and applied, is only an effort of the State of Alabama to protect its citizens from unlawful and violent acts. To effect this exercise of its police power the State of Alabama has seen fit to make criminal a conspiracy or combination to engage in such unlawful and violent acts. This is the only question brought before this Court for decision. According to its numerous decisions, this Honorable Court will consider the statute in question only in the light of its construction by the highest court of the state.

II

THERE IS HERE PRESENTED NO FEDERAL QUESTION ON WHICH THE SUPREME COURT OF THE UNITED STATES HAS NOT HERETOFORE PASSED; ITS NUMEROUS DE-

CISIONS UNEQUIVOCALLY UPHOLD A STATE'S RIGHT UNDER ITS POLICE POWER TO PROTECT ITS CITIZENS AGAINST MANIFESTATIONS OF FORCE AND VIOLENCE.

It is the opinion of Counsel for the State that this case is within the scope and operation of the case of *Milk Wagon Drivers Union vs. Meadowmoor Dairies, Inc.*, 312 U. S. 287. In that case, as in the case at bar, members of the union were exercising their right to picket the business of the employer in order to enforce certain demands made upon the employer. The right to strike and picket constitute fundamental and constitutional guaranties without which the working man would be at the mercy of his employer, and compelled to bargain with him individually. The exercise of these rights is a manifestation of freedom of speech. If the statute in question were enacted and applied to prohibit, as the petitioner contends, an agreement or arrangement to exercise the right to picket, admittedly, it would be a vehicle of abuse approaching the millennium in oppression and injustice.

However, the application of the statute has been narrowed by the interpretation of the Supreme Court of Alabama that it is not to be so perniciously applied. Rather, its scope of operation precludes agreements to peacefully picket, and includes only agreements to engage in unlawful and violent acts, whether such acts occur as a result of picketing or otherwise.

In the Meadowmoor case Mr. Justice Frankfurter recognized that the exercise of freedom of speech by picketing is of such fundamental and paramount importance that it cannot be impaired. However, the Justice proceeded further, relying upon the axiom long recognized by common law and the courts of this country that one must so use his property and exercise his rights as not to impose upon another an unwarranted interference with his property and rights, and held that when the exercise of the right to picket was attended with a context of violence, depredation and abuse, interference by the state to preserve law and order was legally forthcoming. The *Thornhill* case also recognized that interference by the State under such circumstances was a valid exercise of its police power.

The State respectfully insists that a like conclusion must be reached in the case at bar.

It is submitted that the petitioner's contention that he was denied due process in that he was conviced upon a charge not made, and under a statute vague and indefinite in its terms, is without merit. The affidavit was drafted in the language of the statute, and not only sufficiently apprised petitioner of the charge against him, but also informed him of the nature of the accusation. Such an affidavit in code form has been held sufficient by the courts of Alabama, and only where there is a complete lack of certainty in the charge made will there have occurred a denial of due process. Such was not the case here.

It is further submitted that the trial judge, who was thoroughly conversant with the testimony presented by the numerous witnesses, and the Alabama Court of Appeals, after its study of the record containing such testimony, found that sufficient evidence was introduced to establish beyond a reasonable doubt that the petitioner, with several others, entered into a conspiracy, combination or agreement to perform acts of violence or lawlessness to injure the complaining witness' property and business. These facts, in the light of the *Meadowmoor* case, constitute such conduct as is subject to regulation or interference by the State of Alabama, which, by the enactment of the statute in question, has seen fit to protect its citizens therefrom.

The State of Alabama respectfully submits that petitioner's petition for writ of certiorari should not be allowed; or, in the alternative, that the judgments of the Alabama Court of Appeals and the Supreme Court of Alabama should be affirmed.

Respectfully submitted,

WILLIAM N. McQUEEN
Acting Attorney General

JOHN O. HARRIS
Assistant Attorney General
Counsel For Respondent.

GEORGE C. HAWKINS
Assistant Attorney General

BERNARD F. SYKES
Assistant Attorney General

ON THE BRIEF

CERTIFICATE OF SERVICE

I hereby certify that I have forwarded a copy of the foregoing Brief to Hon. Joseph A. Padway, 736 Bowen Building, Washington, D. C. and Hon. Merwin Koonce, Florence, Alabama, Counsel for petitioner. on this the 23 day of October, 1943.

WILLIAM N. McQUEEN

Acting Attorney General

Counsel for Respondent.

(33)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 407

JOE LASH,

Petitioner,

vs.

STATE OF ALABAMA.

PETITION FOR RECONSIDERATION OR REHEARING.

JOSEPH A. PADWAY,
HERBERT S. THATCHER,
MERWIN KOONCE,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 407

JOE LASH,

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vs.

STATE OF ALABAMA.

PETITION FOR RECONSIDERATION OR REHEARING.

To the Honorable the Justices of the Supreme Court of the United States:

Petitioner respectfully represents to this Honorable Court as follows:

1. On September 30, 1943, Petitioner filed a petition for writ of certiorari in the above styled cause with the Supreme Court of the United States and filed a brief in support thereof.

2. On October 26, 1943, the Respondent, State of Alabama, filed a brief in opposition to such petition for writ of certiorari.

3. On November 8, 1943, this Honorable Court issued an order denying said petition for writ of certiorari. No decision, memorandum or comment accompanied said order, nor were any cases cited in connection with such denial.

4. This petition for reconsideration constitutes a final appeal for relief from a statute that has been and will be used to restrain the exercise by working people of basic constitutional rights, to their grievous injury in the State of Alabama, and is made for the purpose of pointing out additional circumstances and to stress arguments not previously stressed but which might induce a reconsideration in view of certain contentions raised in the reply brief of the Respondent. These circumstances and arguments are as follows:

A. The statute under which Petitioner was convicted (Section 3447, 1923 Alabama Code), outlawing combinations to prevent by unlawful means other persons from carrying on any lawful business, was passed at the same time and constitutes a companion statute to the statute forbidding any person from interfering by unlawful means with any lawful business. The latter statute was declared unconstitutional in *Thornhill* v. *Alabama,* 310 U. S. 88. The present statute constitutes as great if not a greater threat to and restraint upon the right of picketing and free communication than does its counterpart struck down in the *Thornhill* case. It offers the possibility of being used, and has been used, as a dragnet or catch-all measure effectively to restrain peaceful picketing in the State of Alabama. In addition to the instant case, there are twenty other convictions in the State under the statute, arising out of picketing in furtherance of a labor dispute, which convictions have been affirmed by the State Supreme Court and await the disposition of the present case.

B. The reply brief of the Respondent has incorrectly stated the principles relating to the conclusiveness of decisions by state supreme courts upon federal constitutional issues by inferring that the State Supreme Court's construction of the statute in question is conclusive as to its constitutionality under the Federal Constitution. The state

courts, of course, are final arbiters only of the meaning and application of state statutes and of their constitutionality under state constitutions; state courts cannot conclusively determine whether the state statutes are in conflict with the Federal Constitution under the meaning and application given by the state court. As stated in *Henry J. Beal, County Attorney,* v. *Missouri Pacific Railroad Company,* 312 U. S. 45, 85 L. Ed. 577:

> "The state courts are the final arbiters of their meaning and appropriate application, subject only to review by this Court if appropriately challenged on constitutional grounds."

See *Howard* v. *Davis,* 209 Ala. 113, 95 Sou. 354, in which the Supreme Court of Alabama recognized the foregoing proposition.

In the present case the decision of the Alabama State Supreme Court held that the statute was to be construed in a certain way, and that its construction was not in conflict with the Federal Constitution. The construction given by the State Supreme Court to the statute was simply this: That a combination to interfere with the business of another without "just cause or legal excuse for so doing" meant a combination to interfere with the business of another "by unlawful means" or "unlawfully". Petitioner is bound by this construction, but he is not bound by the further holding of the State Court that under this construction or by reason of this construction the statute is not in violation of the Federal Constitution. The State Court declared that unlawful conspiracies or conspiracies using unlawful means, or conspiracies acting unlawfully which interfered with a business could constitutionally be prohibited by the State, but at no time was it made clear, either in the decision of the State Supreme Court or in the decision of the lower court or in the accusation or information under which Petitioner was indicted, whether the conspiracy was unlawful by virtue of the fact that the conspiracy was to engage in picketing

which interfered with the conduct of a lawful business, or because Petitioner was to engage in violence which interfered with a lawful business. Contrary to the statement made in the opposition brief of the Respondent, the trial court made no finding of violence whatsoever, the trial court merely stating that "there was ample evidence to support the judgment finding the appellant guilty" of a violation of the statute.

Petitioner has been indicted, tried, convicted and sentenced to imprisonment for an offense the nature of which he has no knowledge even as of the present day. It might be that the statute outlawed combinations to interfere with a business by picketing, or it might be that the statute outlawed combinations to interfere with business by violence. In either event, the statute is unconstitutional. If to outlaw interferences with business by picketing, it is clearly bad under the *Thornhill* case; if to outlaw interference by violence it is equally unlawful under the *Thornhill* case, and under the doctrine in *Lanzetta* v. *New Jersey*, 306 U. S. 451, both because of the fact that the statute does not specify that violence is an element and thus constitutes a pervasive threat to all picketing, and because of the fact that the State fails to inform those accused under it of the nature of their crime.

The fact that the statute might be applied in a way that would be constitutional is, of course, by no means conclusive as to its constitutionality. There can be no argument with the declaration of the State Supreme Court that the State can constitutionally outlaw combinations to interfere with a lawful business by the use of violence, but exception can be taken against any determination by the State Supreme Court that the instant statute is such a statute or accomplishes such a result. If the decision of this Court in the *Thornhill* case means anything, it means that where communication of the facts of a labor dispute is involved, such communication cannot be previously restrained or im-

paired by catch-all language which would on its face include the permissible with that which lawfully could be condemned. Can there be any possible argument that a statute which simply recites that it is a crime to combine to interfere with another's business "unlawfully" or "by unlawful means" does in fact offer a pervasive threat to all picketing; that under such a statute persons desiring to communicate the facts of a labor dispute to the public might very well hesitate to do so where the operation of the business was thereby interfered with; or that such a statute "readily lends itself to harsh and discriminatory enforcement by local prosecuting officials"? (*Thornhill* v. *Alabama, supra.*) When police legislation "results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview" (*Thornhill* v. *Alabama, supra*), then such legislation must be stricken as an interference with basic constitutional rights. The fact that the legislation could reasonably be applied to restrictions on conspiracy to commit violence is immaterial if the legislation could, as in the present case, with equal reasonableness be applied to restrictions on peaceful picketing which interfered with the conduct of a business. It must be remembered that, where the exercise of civil liberties is involved, the State is not accorded its usual freedom in dealing with unlawful conduct:

> "Mere legislative preference for one rather than another means for combatting substantive evils, therefore, may well prove an inadequate foundation on which to rest regulations, which are aimed at or in their operation diminish the effective exercise of rights so necessary to the maintenance of democratic institutions." (*Thornhill* v. *Alabama, supra.*)

In the present case one question continues to remain unanswered: If it is violence in labor disputes with which the State is concerned under the present statute, where or in what manner has the State so indicated in the present

prosecution? Surely, the complaint or information against Petitioner does not so specify, neither does the statute upon which the charges were predicated. Finally the finding against Petitioner in no way specifies that Petitioner had conspired to commit violence, being merely a general one of guilty.

It is respectfully submitted that even under the construction of the statute given to it by the Alabama State Supreme Court the statute contravenes rights under the Federal Constitution. If permitted to stand, it will undoubtedly constitute, as it has constituted in the past, a restraint upon all picketing, and will be used as a dragnet for discriminatory enforcement by local prosecuting officials who may have an anti-labor bias. Further, it will afford encouragement to the passage of similar catch-all legislation in other states where anti-labor prejudice has manifested itself.

WHEREFORE, Petitioner respectfully prays this Honorable Court that it reconsider its denial of the writ of certiorari heretofore filed in this matter and that upon reconsideration it grant the petition as prayed therein.

Respectfully submitted,

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This petition is presented in good faith and not for purposes of delay.

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